

## **APPENDICES**

- A. List of Preparers and Persons Consulted
- B. Consent Decree
- C. Memorandum of Understanding
- D. Public Comments

## **APPENDIX A.      List of Preparers and Persons Consulted**

Restoration Plan and Environmental Assessment prepared by:

Richard Rojas, Trustee	California Department of Parks and Recreation
Ken Wilson, Trustee	California Department of Fish and Game
Diane Noda, Trustee	United States Fish and Wildlife Service
Denise Steurer, Trustee Alternate	United States Fish and Wildlife Service
Barbara Fosbrink, Trustee Alternate	California Department of Parks and Recreation
Valerie Watt, Project Manager	California Department of Parks and Recreation

Other persons consulted:

Morgan Wehtje, Trustee Alternate	California Department of Fish and Game
Don Lollock	California Department of Fish and Game
Kathy Verrue-Slater	California Department of Fish and Game
Chuck McKinley	United States Fish and Wildlife Service
Mary Meyer	California Department of Fish and Game
Kate Symonds	United States Fish and Wildlife Service

## APPENDIX B CONSENT DECREE

1 LOIS J. SCHIFFER  
Assistant Attorney General  
2 Environment & Natural Resources Division  
United States Department of Justice  
3 RICHARD L. BEAL  
Trial Attorney  
4 Environmental Enforcement Section  
301 Howard Street, Suite 870  
5 San Francisco, California 94105  
6 NORA M. MANELLA  
United States Attorney  
7 Central District of California  
LEON W. WEIDMAN  
8 Chief, Civil Division  
KURT ZIMMERMAN  
9 Assistant United States Attorney  
Room 7516 Federal Building  
10 300 North Los Angeles Street  
Los Angeles, California 90012  
11 (213) 894-5709  
12 Attorneys for Plaintiff, United States of America  
13 Listing of Attorneys continues on the Following Page

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, and )  
THE PEOPLE OF THE STATE OF )  
17 CALIFORNIA, the STATE OF )  
CALIFORNIA, Acting by and )  
18 through the Department of )  
Fish and Game, Department of )  
19 Parks and Recreation, State )  
Lands Commission, California )  
20 Regional Water Quality Control )  
Board, Los Angeles Region, )

21 Plaintiffs, )  
22 )  
23 v. )

24 BERRY PETROLEUM COMPANY, a )  
Delaware Corporation, dba )  
BUSH OIL COMPANY )  
25 )  
26 Defendant. )  
27 )  
28 )

Civil Action No 97

- 0427 JSL  
(MC)

CONSENT DECREE

cc: R. Beal 1/23/97

1 DANIEL E. LUNGREN  
Attorney General of the State of California

2 CHARLES W. GETZ, IV  
Assistant Attorney General

3 JENNIFER W. ROSENFELD  
Deputy Attorney General

4 300 South Spring Street, Suite 500  
Los Angeles, California 90013

5 (213) 897-2639

6 Attorneys for Plaintiff, the People of the State of California,  
the State of California Acting by and Through Department of Fish  
7 and Game, Department of Parks and Recreation, California Regional  
Water Quality Control Board, Los Angeles Area, and State  
8 Lands Commission

9 LAURA K. McAVOY

MARC L. CHARNEY

10 ANTHONY H. TREMBLEY

Nordman, Cormany, Hair & Compton

11 1000 Town Center Drive

Post Office Box 93031-9100

12 Oxnard, California 93031-9100

(805) 485-1000

13 Attorneys for Defendant, Berry Petroleum Company  
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1           This Consent Decree ("Decree") is entered into by the  
2 United States of America on behalf of the United States  
3 Department of the Interior, acting through the United States Fish  
4 & Wildlife Service, the United States Department of Commerce,  
5 acting through the National Oceanic and Atmospheric  
6 Administration, the United States Department of Transportation,  
7 acting through the United States Coast Guard, and the United  
8 States Environmental Protection Agency (collectively "United  
9 States"), the People of the State of California, the State of  
10 California acting by and through the California Department of  
11 Fish and Game/Office of Oil Spill Prevention and Response  
12 ("CDFG/OSPR"), the California Department of Parks and Recreation  
13 ("Parks & Recreation"), the California Regional Water Quality  
14 Control Board-Los Angeles Region ("Regional Board"), the  
15 California State Lands Commission ("State Lands Commission")  
16 (collectively "State Agencies") and Berry Petroleum Company, a  
17 Delaware corporation ("Berry"). (The United States and the State  
18 Agencies shall be, collectively "the Governments").

#### 19                           INTRODUCTION

20           This consent decree is intended to encompass claims for  
21 response costs, clean-up costs, restoration costs, damages and  
22 natural resource damages and civil penalties resulting from  
23 rupture of an oil pipeline occurring in Berry's West Montalvo Oil  
24 Field Facilities ("Montalvo facilities") in December 1993,  
25 creating contamination that resulted in the release and migration  
26 of crude oil into the soil and surface waters (collectively  
27 "December 1993 Oil Discharge ") in and around McGrath Lake,  
28

1 McGrath State Beach, the Santa Clara River Estuary and the  
2 Pacific Ocean at McGrath State Beach, in the County of Ventura,  
3 State of California ("McGrath Lake Area").

4 Clean-up actions were undertaken by the United States  
5 and the State Agencies and by Berry to remove the oil that was  
6 discharged as a result of the December 1993 Oil Discharge.  
7 Clean-up actions for oil discharged as a result of the December  
8 1993 Oil Discharge have been concluded.

9 The Governments have alleged that approximately 2,075  
10 barrels of crude oil were discharged and that the discharged oil  
11 resulted in petroleum contamination along a pathway that extended  
12 from the pipeline rupture, along a riparian corridor and adjacent  
13 wood areas, into McGrath Lake, through a diversion pipeline into  
14 the slough that traverses a portion of the dunes and beach, and  
15 finally into the ocean and onto approximately seven (7) miles of  
16 sandy beach.

17 The Governments have alleged that the discharge  
18 resulted in injury to lake vegetation, riparian vegetation, dune  
19 vegetation, sediments, fish, birds and invertebrates, and other  
20 valuable resources, including the federally endangered Brown  
21 Pelican, in and about the McGrath Lake Area.

22 The Governments, through their respective Natural  
23 Resources Trustees (collectively "the Trustees") have proposed  
24 certain Restoration Projects to address Natural Resources Damages  
25 that occurred as a direct result of the December 1993 Oil  
26 Discharge. The Trustees deem the proposed projects reasonable  
27 and necessary measures to restore these Natural Resources.

1           The Parties desire to avoid the costs and risks of  
2 litigation and believe that resolution of this dispute without  
3 further litigation to be in the best interests of the public.

4           The Parties recognize that this Decree is a settlement  
5 of a contested matter. The Decree, the payment, and the  
6 acceptance of consideration provided herein do not represent an  
7 admission of liability or responsibility by any Party.

8           NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and  
9 DECREED as follows:

10                           **JURISDICTION**

11           1. This Court has jurisdiction over the subject  
12 matter and over the parties to this action pursuant to 28 U.S.C.  
13 §§ 1331, 1345, and 33 U.S.C. §§ 1321, 2717. Venue is proper in  
14 this Court pursuant to 28 U.S.C. §§ 1391 and 1395(a); 33 U.S.C.  
15 § 1321(b)(7)(E); 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b).  
16 The Complaint states claims upon which relief may be granted.  
17 The Court has supplemental jurisdiction over claims stated in the  
18 Complaint pursuant to state law.

19                           **PARTIES BOUND**

20           2. This Decree shall apply to and be binding upon and  
21 inure to the benefit of the Parties and as applicable, their  
22 present and former and future officers, directors, employees,  
23 agents, representatives and successors.

24                           **DEFINITIONS**

25           3. Whenever the following terms are used in this  
26 Decree, they shall have the following meanings:

27                           (a) "Natural Resource" and "Natural Resources"



1 mean land, fish, wildlife, biota, air, water, ground water,  
2 drinking water supplies, and other such resources belonging to,  
3 managed by, held in trust by, appertaining to, or otherwise  
4 controlled by the United States and the State Agencies and their  
5 respective agencies, departments and subdivisions.

6 (b) "Natural Resource Trustees" or "Trustees"  
7 means those federal and state agencies designated or authorized  
8 pursuant to the Oil Pollution Act of 1990 and state law to act on  
9 behalf of the public as Trustees for the Natural Resources  
10 belonging to, managed by, controlled by or appertaining to the  
11 United States or State of California. Specifically, as used in  
12 this Decree the Trustees are the United States Department of the  
13 Interior, acting through the U.S. Fish and Wildlife Service, the  
14 California Department of Parks and Recreation and the California  
15 Department of Fish and Game, Office of Oil Spill Prevention and  
16 Response. Collectively the Trustees herein are the trustees of  
17 all of the Natural Resources damaged by the December 1993 Oil  
18 Discharge.

19 (c) "Party" or "Parties" mean Berry including its  
20 officers, directors, employees, agents, representatives and  
21 attorneys; the United States, including its Departments,  
22 Agencies, and subdivisions; and the State Agencies, including  
23 their Departments, Agencies and subdivisions.

24 (d) "Restore" or "Restoration" mean any action to  
25 restore to its pre-spill condition any Natural Resource injured,  
26 lost, or destroyed as a result of the December 1993 Oil Discharge  
27 and the services provided by that Natural Resource, or any action  
28

1 which restores, replaces, rehabilitates, or acquires the  
2 equivalent of, the injured, lost, or destroyed Natural Resource  
3 and affected services.

4 (e) "Natural Resources Damages" means all civil  
5 compensatory and remedial relief recoverable by the Governments  
6 in their capacities as Trustees on behalf of the public for  
7 injury to, destruction of, or loss of any or all Natural  
8 Resources resulting from the December 1993 Oil Discharge,  
9 including but not limited to (1) costs of damage assessment, (2)  
10 compensation for loss, injury, impairment, damage or destruction  
11 of Natural Resources, whether temporary or permanent, or for loss  
12 of use value (active and passive), non-use value, option value,  
13 amenity value, bequest value, existence value, consumer surplus,  
14 economic rent, or any other similar value of Natural Resources,  
15 and (3) costs of restoration, rehabilitation, or replacement of  
16 injured Natural Resources or the acquisition of equivalent  
17 resources.

18 (f) "December 1993 Oil Discharge" means rupture  
19 of an oil pipeline occurring in Berry's Montalvo facilities in  
20 December 1993, creating contamination as a result of the release  
21 and migration of crude oil into the soil and surface waters in  
22 and around McGrath Lake, McGrath State Beach, the Santa Clara  
23 River Estuary and the Pacific Ocean at McGrath State Beach, in  
24 the County of Ventura, State of California.

25 (g) "Response Costs" mean response, removal  
26 and/or clean-up costs incurred by the Governments in responding  
27 to the December 1993 Oil Discharge, including but not limited to  
28

1 actions taken to remove and clean up the spilled oil.

2 (h) The phrase "entry of this Decree" shall mean  
3 the date on which the Court has approved and signed this Decree  
4 and the Decree has been entered on the docket by the Clerk of the  
5 Court.

6 SETTLEMENT PAYMENTS BY BERRY

7 4. Berry shall pay to the Governments the sum of  
8 Three Million One Hundred Seventy Thousand One Hundred Dollars  
9 Fifty-two Cents (\$3,170,100.52) (the "Settlement Amount") in the  
10 manner set forth in paragraphs 5, 6, 8 and 11, inclusive, of this  
11 Decree. The Parties acknowledge that Berry has already paid the  
12 Governments a portion of the Settlement Amount, that is, the sum  
13 of Six Hundred Twenty Thousand One Hundred Dollars Fifty-two  
14 Cents (\$620,100.52), representing the verified invoices for  
15 response costs as set forth in Paragraphs 11(d), (e), (f), (g)  
16 (h) and (i).

17 5. Not later than fifteen (15) days following the  
18 date of notice to Berry that all parties have executed this  
19 Decree, Berry shall pay the Settlement Amount less the amount  
20 previously paid for response costs as referenced in Paragraph 4,  
21 into the Berry Settlement Escrow Account as described in  
22 Paragraph 6 of this Decree.

23 6. Berry shall establish or cause to be established  
24 an escrow account at a federally-chartered bank (the "Berry  
25 Settlement Escrow Account") to receive and hold the Settlement  
26 Amount and all interest accumulated on the Settlement Amount  
27 pending entry of this Decree. The Berry Settlement Escrow  
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1 Account shall earn a rate of interest not less than the then  
2 current rate on 30-day Treasury Bills, and all interest earned  
3 thereon shall be for the benefit of and paid to the Governments,  
4 except that if the Settlement Amount is returned to Berry as a  
5 result of termination of this Decree, all interest thereon shall  
6 be for the benefit of and paid to Berry. Any and all escrow fees  
7 or service fees or other charges levied by such federally-  
8 chartered bank handling the Berry Settlement Escrow Account and  
9 disbursements therefrom in accordance with this Decree shall be  
10 charged against the interest earned on such Account and shall not  
11 be directly chargeable to Berry in any manner. To the extent,  
12 however, there are any charges in excess of the interest earned,  
13 such charges shall be borne by Berry.

14           7. All cleanup actions which were undertaken by the  
15 Governments and by Berry as a result of the December 1993 Oil  
16 Discharge have been concluded and, upon the payment of all money  
17 from the Berry Settlement Escrow Account to the Governments in  
18 accordance with this Decree, all Natural Resource Restoration  
19 work will be the sole responsibility of the Trustees.

20           8. (a) Within fifteen (15) days after receiving  
21 written notice of the entry of this Decree, Berry shall establish  
22 a trust account with the National Fish and Wildlife Foundation in  
23 the form of the McGrath Lake Trust Agreement (for the benefit of  
24 the State Natural Resources Trustees, the California Department  
25 of Fish and Game and the California Department of Parks and  
26 Recreation), attached hereto as Exhibit 1, and instruct the  
27 escrow holder to distribute \$1,315,000, plus the interest thereon

1 from the Berry Settlement Escrow Account into the McGrath Lake  
2 Trust for Restoration of Natural Resources. Berry shall not  
3 have, nor be held responsible for, any duties or liabilities  
4 arising from or associated with the existence, establishment,  
5 funding, or management of the McGrath Lake Trust beyond those  
6 duties stated in this paragraph. Upon transfer of funds to the  
7 Trustee of the McGrath Lake Trust as provided in this paragraph,  
8 Berry shall have no further obligations, fiduciary, financial or  
9 otherwise, with respect to the Trust.

10           The McGrath Lake Trust shall be used to implement  
11 Restoration projects relating to Natural Resources Damages in the  
12 McGrath Lake Area arising from the December 1993 Oil Discharge.  
13 The Trustees shall bear sole responsibility for the undertaking  
14 of such Restoration projects (and any programs, activities or  
15 studies in connection therewith) and sole discretion concerning  
16 the expenditure of sums from the McGrath Lake Trust.

17           (b) It is the intent of this Decree, upon satisfaction  
18 by Berry of all the conditions of the Decree for which it is  
19 responsible, to fully relieve Berry of all responsibility for and  
20 obligation for Restoration of Natural Resources for which the  
21 Trustees are Natural Resources Trustees.

22           The California Coastal Commission, the County of  
23 Ventura, and the City of Oxnard, as a result of emergency Coastal  
24 Development Permits issued by each of those agencies with respect  
25 to the December 1993 Oil Discharge, have each required Berry to  
26 apply for and obtain issuance of "regular" Coastal Development  
27 Permits. Each of the permits has or is expected to contain a

1 condition that requires Berry to implement the natural resources  
2 restoration plan adopted by the state and federal Natural  
3 Resources Trustees. It is the intent of this Decree that the  
4 Trustees will implement the natural resources restoration plan  
5 that they adopt and that such implementation will fully satisfy  
6 the condition of the regular permits relating to the Restoration  
7 of Natural Resources. Notwithstanding the intent to satisfy the  
8 condition of the several regular permits pertaining to  
9 Restoration of Natural Resources, this Decree shall not be  
10 construed to create any right or power in the permitting agencies  
11 to seek to enforce the Restoration of Natural Resources  
12 conditions against the state or federal Trustees. It is the  
13 intent of the parties that Berry's payment of the required amount  
14 to the McGrath Lake Trust shall fully satisfy Berry's obligation  
15 arising pursuant to the condition.

16           If documents are required to be executed by any of the  
17 parties to effectuate the provisions of this Paragraph 8, each  
18 party whose assistance is needed agrees to cooperate by executing  
19 and delivering such documents to the party(ies) needing  
20 assistance.

21           9. Berry shall have no further responsibility under  
22 the most recent Action Plan (the Bush Oil/Berry Petroleum Action  
23 Plan for February 14, 1994 and Beyond) pertaining to the December  
24 1993 Oil Discharge. Such Action Plan is cancelled and of no  
25 further force or effect, and no further Action Plan(s) relating  
26 to the December 1993 Oil Discharge will be imposed upon Berry.

27           10. As part of the process of approving Berry's  
28

1 general permit application, the Coastal Commission issued an  
2 Interim Site Stabilization Plan that may require Berry to expend  
3 money to plant willow trees in the riparian corridor near where  
4 the rupture in the pipeline occurred. In the event Berry expends  
5 money to comply with the Coastal Commission's Interim Site  
6 Stabilization Plan involving planting of willow trees in the  
7 riparian corridor near where rupture of the pipeline occurred  
8 Berry shall submit detailed cost documentation to the Trustees  
9 with a request that it be reimbursed for those costs. The  
10 Trustees will reimburse the reasonable costs from the McGrath  
11 Lake Trust to the extent that the Trustees are not required to  
12 incur duplicate costs due to discovery of persistent oil in the  
13 soil where those willows may be planted. If oil is found in the  
14 soil and the Trustees find it necessary during the removal of  
15 that oil to dig up one or more of the trees, the Trustees will  
16 incur a duplicate cost of replacing the tree(s). The duplicated  
17 costs will not be reimbursed to Berry. The remaining reasonable  
18 costs incurred by Berry in planting trees to comply with the  
19 interim plan will be reimbursed.

20 11. Within fifteen (15) days after entry of this  
21 Decree, Berry shall instruct the escrow holder holding the Berry  
22 Settlement Escrow Account to irrevocably transfer the following  
23 sums to the specified designees:

24 (a) The sum of \$175,000.00 plus the interest  
25 thereon for remediation of environmental  
26 injury through sediment contamination  
27 characterization to the Regional Water  
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1 Quality Control Board-Los Angeles Region by  
2 certified check or money order made payable  
3 to "Los Angeles Regional Water Quality  
4 Control Board Sediment Contamination  
5 Characterization Discretionary Fund, Account  
6 Number 34-1509-8888," and sent by certified  
7 mail to:

8 San Jose State University Foundation  
9 L.A. Regional Water Quality Control Board  
10 Contamination Characterization  
11 Discretionary Fund  
12 Account Number 34-1509-8888  
13 Contracts and Grants Office  
14 P.O. Box 720130  
15 San Jose, CA 96172-0190  
16 ATTN: Erin Romer

17 (b) The sum of \$25,000.00 plus the interest  
18 thereon to the Regional Water Quality Control  
19 Board-Los Angeles Region as civil penalties  
20 to the Cleanup and Abatement Account by  
21 certified check or money order made payable  
22 to "State Water Resources Control Board-  
23 Cleanup and Abatement Account," and sent by  
24 certified mail to:

25 State Water Resources Control Board  
26 Accounting Office  
27 901 P Street  
28 Sacramento, CA 95812  
ATTN: Kelly Bartlett

(c) The sum of \$25,000.00 plus the interest  
thereon for civil penalties pursuant to  
Section 11 of the Endangered Species Act, 16  
U.S.C. § 1540, by certified check or money



1 order made payable to "U.S. Fish and Wildlife  
2 Service," and sent by certified mail to:

3 The U.S. Fish and Wildlife Service  
4 c/o Office of the Solicitor  
5 600 Harrison Street, Suite 545  
6 San Francisco, California 94107-1373

- 7 (d) The sum of \$51,758.29 plus the interest  
8 thereon for losses (i.e., lost income  
9 attributable to the December 1993 Oil  
10 Discharge) to the State Department of Parks  
11 and Recreation. The State Department of  
12 Parks and Recreation warrants that promptly  
13 upon receipt of the funds, it shall pay  
14 \$5,882.99 of said funds that are owing to  
15 Water Conservation Services Incorporated, a  
16 vendor that was operating on park lands, and  
17 was damaged by the December 1993 Oil  
18 Discharge. Neither Berry nor the Oil Spill  
19 Liability Trust Fund shall bear any  
20 obligation to Water Conservation Services  
21 Incorporated. The State Department of Parks  
22 and Recreation will indemnify, defend and  
23 hold Berry and the Oil Spill Liability Trust  
24 Fund harmless from any claims or liabilities  
25 alleged by Water Conservation Services  
26 Incorporated arising from the December 1993  
27 Oil Discharge. Payment shall be made by  
28 certified check made payable to the

1 "California Department of Parks and  
2 Recreation" and sent to:

3 Steven Treanor  
4 California Department of Parks and  
5 Recreation  
6 District Superintendent  
7 Channel Coast District  
8 1933 Cliff Drive, Suite 27  
9 Santa Barbara, CA 93109

- 10 (e) The sum of \$351,040.58 plus the interest  
11 thereon for response and damage assessment  
12 costs to the Department of Fish and Game-  
13 Office of Oil Spill Prevention and Response.  
14 Payment shall be made by certified check made  
15 payable to the "Oil Spill Response Trust  
16 Fund" and sent to:

17 Oil Spill Response Trust Fund  
18 Department of Fish and Game  
19 P. O. Box 944209  
20 Sacramento, CA 94244-2090

- 21 (f) The sum of \$40,702.85 plus the interest  
22 thereon for response and damage assessment  
23 costs to the Department of Parks and  
24 Recreation. Payment shall be made by  
25 certified check made payable to the  
26 "California Department of Parks and  
27 Recreation" and delivered to:

28 Steven Treanor  
California Department of Parks and  
Recreation  
District Superintendent  
Channel Coast District  
1933 Cliff Drive, Suite 27  
Santa Barbara, CA 93109

1 (g) The sum of \$43,225.73 plus the interest  
2 thereon for response costs in investigating  
3 the December 1993 Oil Discharge to the State  
4 Lands Commission. Payment shall be made by  
5 certified check made payable to the "State  
6 Lands Commission" and delivered to:

7 Mark Meier  
8 State Lands Commission  
9 100 Howe Avenue, Suite 100  
10 Sacramento, CA 95825-8202

11 (h) The sum of \$2,400.00 plus the interest  
12 thereon for damage assessment costs of the  
13 United States Department of the Interior,  
14 Office of the Solicitor. Payment shall be  
15 made by certified check made payable to the  
16 "Secretary of the Interior." That check  
17 shall reflect that it is a payment to the  
18 Natural Resources Damage Assessment and  
19 Restoration Fund, Account No. 14x5198--  
20 Assessment Cost Reimbursement" and shall  
21 reference the "McGrath Lake Oil Discharge."

22 It shall be delivered to:

23 Chief, Division of Finance  
24 U.S. Fish and Wildlife Service  
25 4401 North Fairfax Drive, Room 380,  
26 Arlington, VA 22203.

27 Additionally, the sum of \$10,661.90 for  
28 damage assessment costs of the U.S. Fish and  
Wildlife Service shall be paid by certified  
check made payable to the "U.S. Fish and

1 Wildlife Service." That check shall reflect  
2 that it is reimbursement for OPA fund costs  
3 expended and shall reference the "McGrath  
4 Lake Oil Discharge." It shall be delivered  
5 to:

6 Marge Feysa  
7 Branch of Budget  
8 U.S. Fish and Wildlife Service  
9 Region One  
10 911 N.E. 11th Avenue  
11 Portland, Oregon, 97232-4181.

- 12 (i) The sum of \$120,311.17 plus the interest  
13 thereon for response costs to the United  
14 States Coast Guard. Said sum includes  
15 payment of response costs incurred by the  
16 United States Fish and Wildlife Service and  
17 the United States National Oceanic and  
18 Atmospheric Administration. Payment shall be  
19 made by certified check made payable to the  
20 "Oil Spill Liability Trust Fund." It shall  
21 be delivered to:

22 U. S. Coast Guard  
23 4200 Wilson Boulevard  
24 Suite 1000  
25 Arlington, VA 22203-1804

- 26 (j) The sum of \$10,000.00 plus the interest  
27 thereon for future costs of the United States  
28 Department of the Interior, U.S. Fish and  
Wildlife Service to develop a plan for  
restoration and for future oversight and  
monitoring of the restoration plan

1 implementation. Payment shall be made by  
2 certified check made payable to the  
3 "Secretary of the Interior." That check  
4 shall reflect that it is a payment to the  
5 Natural Resources Damage Assessment and  
6 Restoration Fund, Account No. 14x5198--  
7 Assessment Cost Reimbursement" and shall  
8 reference the "McGrath Lake Oil Discharge."  
9 It shall be delivered to:

10 Chief, Division of Finance  
11 U.S. Fish and Wildlife Service  
12 4401 North Fairfax Drive, Room 380,  
Arlington, VA 22203.

(k) 13 The sum of \$100,000 plus the interest thereon  
14 to the Department of Fish and Game - Office  
15 of Oil Spill Prevention and Response to  
16 develop a plan for restoration and for future  
17 oversight and monitoring of the restoration  
18 plan implementation. Payment shall be made  
19 by tendering a certified check payable to the  
20 Department of Fish and Game - Office of Oil  
21 Spill and Prevention and Response or its  
22 designee. It shall be delivered to:

23 The Department of Fish and Game  
24 Office of Oil Spill Prevention and Response  
25 Attn: Katherine Verrue-Slater, staff counsel  
26 1700 K Street, Suite 250  
27 Sacramento, California 95814

28 As used in this subparagraph, "designee"  
shall mean any entity approved by the

1 Administrator of the Office of Oil Spill  
2 Prevention and Response that is authorized to  
3 engage in the restoration, monitoring, and  
4 oversight activities required to implement  
5 this agreement.

- 6 (1) The sum of \$100,000 plus interest thereon to  
7 the Department of Parks and Recreation to  
8 develop a plan for restoration and for future  
9 oversight and monitoring of the restoration  
10 plan implementation. Payment shall be made  
11 by tendering a certified check payable to the  
12 Department of Parks and Recreation. It shall  
13 be delivered to:

14 Steven Treanor  
15 California Department of Parks  
16 and Recreation  
17 District Superintendent  
18 Channel Coast District  
19 1933 Cliff Drive, Suite 27  
20 Santa Barbara, CA 93109

- 21 (m) The sum of Eight Hundred Thousand Dollars  
22 (\$800,000.00) plus the interest thereon for  
23 civil penalties pursuant to Section 311 of  
24 the Federal Water Pollution Control Act, 33  
25 U.S.C. §1321. Payment shall be made by  
26 tendering a certified or cashier's check made  
27 payable to the "Oil Spill Liability Trust  
28 Fund." It shall be delivered to:

U. S. Coast Guard  
4200 Wilson Boulevard  
Suite 1000

12. Verified invoices have been submitted by the named agencies to Berry for the response costs described in paragraphs 11(d), (e), (f), (g), (h) and (i). Response costs not included in the verified invoices for 11(d), (e), (f), (g), (h) and (i) shall not be chargeable or payable by Berry. As referenced in Paragraphs 4 and 5, Berry has previously paid to the Governments the sum of \$620,100.52 representing payment in full of the verified invoices for response costs referenced in paragraphs 11(d), (e), (f), (g), (h) and (i). No costs (including response and damage assessment costs) incurred by the Governments after October 18, 1994 shall be charged to or payable by Berry, except as provided in paragraph 18 with respect to claims presented to and paid by the Oil Spill Liability Trust Fund or the California Oil Spill Response Trust Fund.

13. The Trustees commit to the expenditure of the funds set forth in paragraph 8 above, for the design, implementation, permitting, and monitoring of Restoration projects pursuant to the natural resources restoration plan adopted by the Trustees. While acknowledging the need to satisfy the County of Ventura and the Coastal Commission, the Trustees retain the ultimate authority and responsibility to determine the use of funds received for Natural Resource Damages in accordance with relevant federal or state law, and the regulations governing use of recoveries for Natural Resource Damages.

/ / / / / /

/ / / / / /

1                                    RELEASES AND COVENANTS NOT TO SUE

2                    14. Subject to the provisions of Paragraph 18,  
3 effective upon entry of this Decree and Berry's payment of the  
4 Settlement Amount in the manner prescribed in paragraphs 5, 6, 8  
5 and 11 inclusive, of this Decree, the Governments release Berry  
6 from, and covenant not to sue or take any other civil or  
7 administrative action against Berry for, any and all civil claims  
8 alleged in the Complaint in this action and all claims for  
9 damages and civil penalties including, but not limited to, injury  
10 to, loss of, or destruction of Natural Resources arising out of  
11 the December 1993 Oil Discharge alleged in the Complaint.

12                    15. Effective upon entry of this Decree, Berry  
13 releases the Governments from, and covenants not to sue or to  
14 take any other civil or administrative action against the  
15 Governments, including the Oil Spill Liability Trust Fund, for  
16 any and all civil claims that arise from, or are based on, the  
17 December 1993 Oil Discharge. Berry further releases all  
18 agencies, entities and employees of the State of California,  
19 including but not limited to the California Highway Patrol.  
20 Berry further waives the requirements of 50 C.F.R. Part 11,  
21 pertaining to the issuance of an administrative Notice of  
22 Violation, with regard to the civil penalty pursuant to the  
23 Endangered Species Act.

24                                    RESERVATION OF RIGHTS

25                    16. Nothing in this Decree creates, nor shall it be  
26 construed as creating, any claim in favor of any person not a  
27 party to this Decree.



1           17. The covenants not to sue in paragraphs 14 and 15  
2 shall apply only to matters expressly set forth in said  
3 paragraphs. Nothing in this consent decree is intended to nor  
4 shall be construed as a release or covenant not to sue for any  
5 claim or cause of action, administrative or judicial, civil or  
6 criminal, in law or in equity, which any party may have against  
7 the other for failure to satisfy the requirements of this Decree,  
8 or which the Governments may have against Berry for:

9           (a) Claims for criminal liability brought by the  
10 United States;

11           (b) Claims based on any release or threatened  
12 release at any location not in the McGrath Lake Area not  
13 attributable to the December 1993 Oil Discharge; and

14           (c) Claims based on any future release or  
15 threatened release at the McGrath Lake Area not attributable to  
16 the December 1993 Oil Discharge.

17           **RE-OPENER FOR CERTAIN CLAIMS ARISING FROM ORIGINAL**  
18   **DISCHARGE**

19           18. Notwithstanding the payments specified in  
20 Paragraph 11(i) to the United States Coast Guard, and Paragraph  
21 11(e) to the Department of Fish and Game-Office of Oil Spill  
22 Prevention, the Oil Spill Liability Trust Fund, and the  
23 California Oil Spill Response Trust Fund retain their respective  
24 rights, including rights to subrogation vested in said Funds by  
25 33 U.S.C. § 2715 and California Government Code Section 8670.51  
26 and 51.1, respectively, for any removal costs or damages paid and  
27 any costs incurred by the Oil Spill Liability Trust Fund or  
28

1 the California Oil Spill Response Trust Fund by reason of any  
2 Third Party Claims presented to the Oil Spill Liability Trust  
3 Fund or the California Oil Spill Response Trust Fund within the  
4 applicable statute of limitations. Berry reserves the right to  
5 defend and contest any Third Party Claim as may be provided under  
6 federal and state statutes and regulations.

7 NOTICES AND SUBMITTALS

8 19. Whenever, under the terms of this Decree, written  
9 notice is required to be given by one Party to another, it shall  
10 be directed to the individuals and addresses specified below,  
11 unless the individuals specified or their successors give notice,  
12 in writing, to the other Parties that notice should be directed  
13 to a different individual or address:

14 Notice to the United States:

15 Chief, Environmental Enforcement Section  
16 Environment and Natural Resources Division  
17 U.S. Department of Justice  
18 P.O. Box 7611  
19 Ben Franklin Station  
20 Washington, D.C. 20044

21 Notice to the State Agencies:

22 Jennifer Rosenfeld  
23 Deputy Attorney General  
24 Office of the California  
25 Attorney General  
26 300 South Spring Street  
27 Los Angeles, CA 90013

28 Administrator  
Department of Fish and Game  
Office of Oil Spill Prevention and Response  
1700 K Street  
Sacramento, CA 94244-2090

29 Notice to Berry:

30 Jerry V. Hoffman

1 President, Berry Petroleum Company  
2 Post Office Bin X  
3 Taft, California 93268

4 with copy to:

5 Laura K. McAvoy  
6 Nordman, Cormany, Hair & Compton  
7 1000 Town Center Drive, 6th Floor  
8 Post Office Box 9100  
9 Oxnard, California 93031-9100

10 TERMINATION

11 20. In the event this Decree is not approved in  
12 accordance with Paragraph 3(h), Berry shall have the right to  
13 terminate this Decree and obtain release of the Escrow Funds,  
14 together with the interest thereon, to its own account.

15 REPRESENTATIVES

16 21. Each of the undersigned representatives of Berry,  
17 each representative of the Departments and Agencies of the State  
18 of California and the Assistant Attorney General certifies that  
19 he or she is fully authorized to enter into the terms and  
20 conditions of this Decree and to execute and legally bind the  
21 parties to this Decree.

22 INTEGRATION CLAUSE

23 22. This document (including its exhibits) encompasses  
24 the entire Decree of the Parties with respect to the subject  
25 matter hereof and totally supersedes all prior decrees or  
26 understandings, whether oral or in writing.

27 MODIFICATION

28 23. Minor modifications not materially altering this  
Decree may be effected by the written agreement of the Parties.  
No other modifications of this Decree may be made unless the

1 Parties agree in writing to the modification and the Court  
2 approves of the requested modification. Nothing in this  
3 paragraph shall be deemed to limit the Court's power to supervise  
4 or modify this Decree.

5 CONFIDENTIALITY

6 24. As between the State Agencies and Berry, the  
7 parties acknowledge that as a "reporting company" under the  
8 Securities Exchange Act of 1934 (the "Exchange Act") and a  
9 company listed on the New York Stock Exchange, Berry is required  
10 to disclose the existence of this Decree within mandated time  
11 frames. In order to allow Berry to comply with such disclosure  
12 responsibilities in a responsible manner, the State Agencies  
13 agree that neither they nor their representatives shall issue any  
14 news or press release or otherwise publicize in any manner this  
15 Decree or its terms, prior to the lodging of this executed Decree  
16 with the Court.

17 SIGNING IN COUNTERPARTS

18 25. This Decree may be executed in several  
19 counterparts, all of which when taken together, will constitute  
20 one Decree.

21 Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 1996.  
22  
23  
24

25 UNITED STATES DISTRICT JUDGE  
26  
27  
28

1 WE HEREBY CONSENT to the entry of this Decree:

2 FOR THE UNITED STATES OF AMERICA:

3  
4 LOIS J. SCHIFFER  
5 Assistant Attorney General  
6 Environmental and Natural Resources  
7 Division  
8 United States Department of Justice  
9 United States Department of Justice  
10 P.O. Box 7611  
11 Washington, D.C. 20044

Date: 5/3/96

12 RICHARD L. BEAL  
13 Environmental Enforcement Section  
14 Environmental and Natural Resources  
15 Division  
16 San Francisco, CA

Date: 10-22-96